



EUROPEAN COMMISSION
Impact Assessment Board

Brussels,
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Opinion

Title **DG EMPL – Analytical document on the agreement concluded by social partners on certain aspects of the organisation of working time in inland waterway transport**
(draft version of 20 November 2013)*

(A) Context

Article 14 of the Working Time Directive provides for other Community instruments containing more specific working time requirements for certain occupations or occupational activities. Such specific requirements have already been laid down by various Directives for seafarers and for mobile transport workers in civil aviation and in cross-border rail services, based on European agreements concluded by the social partners for the sectors concerned. When social partners conclude such agreement and request its implementation in the form of a proposal for a Council Directive in accordance with Article 155 (2) TFEU, the Commission can accept or reject their request, but it cannot amend the text of the agreement. In order for the College to take an informed decision, the representativeness and mandate of the signatory parties as well as the legality of the agreement's clauses has to be assessed. In addition, when an agreement is concluded on the social partners' own initiative, the Commission has to assess the appropriateness of the EU action in the area. Such assessment is presented in this analytical document.

(B) Overall opinion: POSITIVE

The report should be improved in a number of respects. It should strengthen the problem definition by better explaining and providing greater evidence of the identified issues with the health and safety protection of mobile workers and the unfair competition between operators. The report should better present the content and the scope of the Agreement. Against this background, it should present a more focused and complete overview of the impacts on Member States and stakeholders, including those that were not represented in the negotiation of the Agreement. The views of the latter should be also presented where known. Finally, the report should better assess the efficiency with which the proposed Agreement is expected to achieve its objectives, and clarify how this will be monitored and evaluated.

(C) Main recommendations for improvements

(1) Strengthen the problem definition and develop the baseline scenario. The report should be clearer on the nature and magnitude of problem(s) related to the diversity of

* Note that this opinion concerns a draft impact assessment report which may differ from the one adopted.

existing regulatory frameworks. In particular, it should: (i) clarify in which Member States and/or circumstances the health and safety of mobile workers in the inland waterway sector is currently insufficiently protected; and (ii) better illustrate that operators compete on working hours in an unfair manner. The report should also analyse in greater detail the drivers of low compliance with the working time rules (such as their inadequacy, unclear applicability, unenforceability). Finally, the report should develop an explicit baseline scenario by setting out how the problems would evolve in absence of the Agreement.

(2) Better present the Agreement and its objectives. The report should improve the presentation of the Agreement by clarifying its scope, highlighting the areas where additional national (or international) provisions could be added and explaining the relation between the specific provisions of the Agreement and the general provisions of the Working Time Directive. The envisaged distribution of responsibilities in terms of verification and enforcement duties should be clearly spelled out. In this context, the report should further strengthen the link between the problems and the objectives, as well as between the objectives and specific measures (notably with regard to the issue of unfair competition). The report should also briefly summarise the assessment of the level of representativeness of the parties that signed up to the Agreement and clearly identify the social partners that were not represented in negotiating the Agreement but that would nevertheless be impacted by it (including shipboard personnel and workers/employers in Member States characterised by low unionisation or collective bargaining). Finally, the report should recall the reasons why a Directive is under consideration rather than an autonomous agreement between private partners.

(3) Better assess impacts. The report should present a clearer, more focused and more complete overview of the impacts for all Member States with inland waterway transport, including the special case of those without interconnected waterways. This should be done on the basis of an overview table indicating in which Member States the current rules are (a) equal, (b) more favourable and (c) less favourable than the envisaged measures (such as scope, applicability, time limits, health checks etc.). Building upon this and the share of workers/operators that would be affected, the report should estimate economic impacts to the extent possible. This would include impacts on operators in terms of increased hiring needs (in particular in those Member States with less restrictive working time rules), consequences for the profitability of operators (including SMEs and micros), the risk of increased self-employment and the impact on end-users. The report should also provide a more detailed analysis of the verification costs per Member State (drawing further on the estimates from the background study), and the additional expense arising from the need to carry out systematic health checks. The report should pay particular attention to the impacts on those countries/stakeholders which were not represented in the process of negotiations and corroborate the analysis by their views where known. It should also clarify the extent to which the diversity of rules would be actually reduced (and thus regulatory simplification achieved) given the application of the "more favourable" clause and the planned increased flexibility in the reference period (12 months). Finally, the report should better assess how significantly the Agreement could improve the overall level of compliance with the working time rules.

(4) Design appropriate monitoring indicators. The report should develop key monitoring indicators that would allow monitoring the progress on the identified policy objectives, including higher flexibility for operators and easier enforcement of working time rules. It should indicate against which benchmarks these indicators will be evaluated, reflecting experience with the previous sectoral agreements (e.g. rail, civil aviation, seafarers), where

available.

Some more technical comments have been transmitted directly to the author DG and are expected to be incorporated in the final version of the impact assessment report.

(D) Procedure and presentation

The report should include an overview of the stakeholder consultation clarifying the views of those stakeholders that were not represented in negotiating the Agreement (and their Member States of origin). The report should also include a glossary of terms and a list of abbreviations. References to background material should be cross-checked and made more operational (by including page numbers so the information can be easily retrieved). Finally, the report should annex the Agreement itself and its accompanying letter, as well as available country-specific analysis.

(E) IAB scrutiny process

Reference number	2009/EMPL/016
External expertise used	No
Date of IAB meeting	17 December 2013